

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**THOMAS G. FIGANIAK and
VALERIE A. FIGANIAK,**

Plaintiffs,

v.

**FRATERNAL ORDER OF OWL'S
HOME NEST, LOYAL ORDER OF
OWLS NEST LODGE 2558 d/b/a
THE OWLS NEST, YE OLDE ALPHA,
INC., CRAIG TYLER PEACOCK,
JARRETT CHANDLER,
and TYLER JOHNSON,**

Defendants.

CASE NO: 5:15-CV-111

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT, FRATERNAL ORDER
OF OWLS HOME NEST, INC.'S MOTION TO DISMISS FOR FAILURE TO STATE A
CLAIM AND INSUFFICIENT SERVICE OF PROCESS**

Plaintiffs, Thomas G. Figaniak and Valerie A. Figaniak, h/w, as Co-Administrators and Personal Representatives of the Estate of Kevin Figaniak, deceased, by and through their attorneys, Saltz, Mongeluzzi, Barrett, and Bendesky, P.C. and Guy Bucci, Esq., respectfully request that this Honorable Court deny Defendant, Fraternal Order of Owls Home Nest, Inc.'s Motion to Dismiss. As set forth more fully in the accompanying Memorandum of Law, filed contemporaneously herewith and incorporated by reference, Plaintiffs' Complaint states a factual and legal basis to find Fraternal Order of Owls Home Nest, Inc. liable for the acts of Loyal Order of Owls Nest Lodge 2558 d/b/a The Owls Nest. Moving Defendant claims that it is unaffiliated with the particular local organization that negligently over-served the assailants in this dram shop case. Moving Defendant, however, has consistently refused to provide an affidavit by a corporate designee attesting to Moving Defendant's allegations. Inexplicably, Moving

Defendant's Motion to Dismiss is devoid of any supporting affidavit. The extent of the affiliation between the Fraternal Order of Owls Home Nest, Inc. and the Loyal Order of Owls Nest Lodge 2558 d/b/a The Owls Nest is a crucial issue in this action and requires factual discovery. Accordingly, without a corporate designee affidavit discovery must be had to determine the exact nature of the relationship between the two Orders.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court DENY Moving Defendant's Motion to Dismiss and permit the parties to engage in factual discovery on this issue.

Respectfully Submitted,

/s/ **Guy R. Bucci**
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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2015, I electronically filed the forgoing Response in Opposition to Defendant, Fraternal Order of Owls Home Nest, Inc.'s Motion to Dismiss for Failure to State a Claim and Insufficient Service of Process with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Guy R. Bucci

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